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STATE FOR EAP/ANP, EEB/IFD/OIA, STATE PASS TO USTR

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TAGS: EFIN EINV ELAB ETRD KTDB OPIC USTR NZ
SUBJECT: 2009 INVESTMENT CLIMATE STATE FOR NEW ZEALAND

REF: 08 STATE 119784

¶1. Following is Post's resubmission of the 2009 Investment Climate Statement (ICS) for New Zealand. As of end of January 2009, Post submitted ICS as part of the 2009 Country Commercial Guide per reftel.

¶2. Begin text of ICS submission:

2009 Investment Climate Statement - New Zealand

Openness to Foreign Investment

Foreign direct investment in New Zealand is generally welcomed and encouraged without discrimination.

The New Zealand Government's Overseas Investment Office (OIO) screens foreign investments that exceed NZD100 million and represent 25 percent or more of the equity in a New Zealand enterprise. Government approval also is required for purchases of land larger than 5 hectares (12.35 acres) and land in certain sensitive or protected areas. Any application to purchase land must satisfy the national interest test. For land purchases, foreigners who do not intend to live in New Zealand must provide a management proposal covering any historic, heritage, conservation, or public access matters and any planned economic development. That proposal would have to be approved and generally made a condition of consent. Overseas purchasers also must demonstrate the necessary experience to manage the investment.

The OIO monitors foreign investments after approval. Investors must report regularly on their compliance with the terms of the consent. If foreign investors are found to have included deceptive statements on approval applications, the High Court can order the disposal of their New Zealand holdings.

In practice, the government's approval requirements have not been an obstacle for U.S. investors. Very few applicants have been denied (only 46, versus 1,555 granted, from 2000- 2007). Those denied, for the most part, intended to purchase land for farming purposes, residential subdivision, or accommodation.

For the 2008 calendar year 146 applications by foreign investors were submitted to the New Zealand Overseas Investment Organization (OIO) of which 130 were approved worth approximately US$10 billion. Investors from the United States submitted 56 applications in 2008 and all were approved and of that amount 22 involved gaining a controlling a shareholding of 51 percent or greater in extant New

Zealand enterprises. In 2008, the largest investment managed by the OIO was the acquisition of Vector Wellington Electricity Network Limited for USD427 million by Cheung Kong Infrastructure Holdings Limited and Hong Kong Electric Holdings Limited.

Very few government-owned enterprises remain to be privatized. The government has not discriminated against foreign buyers, but has placed limitations on foreign ownership of Air New Zealand and Telecom New Zealand.

The New Zealand government offers virtually no incentives for foreign investment, except for a tax rebate for large-scale film and television projects produced in the country. Stable, low inflation and a relatively-open economy are viewed as the strongest incentives for investment.

There is no capital gains tax. New Zealand has agreements banning double taxation with 29 countries, including the United States. The corporate tax rate is 33 percent for all companies, domestic and foreign. The personal tax rate for most foreign investors (from the combined effects of New Zealand's nonresident withholding tax and company tax) is also 33 percent and the maximum personal tax rate is 39 percent.

Under legislation passed in 1995, foreign firms and investors were granted a national treatment obligation on corporate taxes and transfer-pricing rules were aligned so that New Zealand adheres to Organization for Economic Cooperation and Development (OECD) practices. Additionally, thin capitalization regulations were tightened to discourage foreign companies from using excessive debt to avoid New Zealand taxes. The rules offer foreign investors

greater transparency and predictability.

The OIO operates a comprehensive Internet website (www.oio.linz.govt.nz) that explains New Zealand investment policy and walks potential investors through the application process.

Investment New Zealand, the government's investment promotion agency, works with offshore investors to facilitate investment in New Zealand. Information about the agency and contact details for its offices in the United States can be obtained from its website: http://www.investnewzealand.govt.nz.

Conversion and Transfer Policies

There are no restrictions on the inflow or outflow of capital, and the currency is freely convertible. Full remittance of profits and capital is permitted through normal banking channels.

Expropriation and Compensation

Expropriation has not been an issue in New Zealand, and there are no outstanding cases.

Dispute Settlement

Investment disputes are extremely rare, and there have been no major disputes in recent years. The mechanism for handling disputes is the judicial system. New Zealand is a party to the Convention on the Settlement of Investment Disputes Between States and Nationals of Other States and to the New York Convention of 1958. Property and contractual rights are enforced by a British-style legal system. The highest appeals court is a domestic Supreme Court, which replaced the Privy Council in London and began hearing cases July 1, ¶2004.

Performance Requirements and Incentives

There are no performance requirements or incentives associated with foreign investment, although the government may require foreign

buyers of land to report periodically on their compliance with the terms of the government's consent to their purchase.

Right to Private Ownership and Establishment

There are no restrictions on the right to establish, own, and operate business enterprises. Government approval is required, however, for foreign investments over NZD100 million where a foreigner proposes to take 25 percent or more of a business and investments in commercial fishing and certain land purchases. The government limits investments in Air New Zealand and Telecom New Zealand.

Aside from the government equity holdings established at the time of formation, state owned enterprises (SOEs) are provided no special advantages in their competition with private entities. In general, there has been no restriction on foreign purchasers in the privatization of assets, except for the ceilings on foreign ownership stakes in Air New Zealand and Telecom New Zealand. To preserve landing rights, no more than 49 percent of Air New Zealand, the national flagship carrier, can be owned by foreigners. A single foreign investor can hold a maximum of 49.9 percent of the total voting shares of Telecom New Zealand. In addition, under the Fisheries Act 1983, foreigners can only lease New Zealand fishing rights.

Protection of Property Rights

New Zealand is a member of the World Intellectual Property Organization, the Paris Convention for the Protection of Industrial Property, the Berne Convention, and the Universal Copyright Convention. It fulfilled its Trade-Related aspects of Intellectual Property (TRIPS) Agreement obligations in most respects with the passage of the Copyright Act 1994, Layout Designs Act 1994, 1994 amendments to the Patents Act 1953, the Trade Marks Amendment Act

1953, and the Plant Variety Rights Act 1987. Amendments made to existing intellectual property statutes came into effect January 1, ¶1995. The Trade Marks Act 2002 created new criminal offenses for counterfeiting trademarks and increased the penalties for pirating copyright goods.

The Patents Bill was introduced to the House of Representatives for its first reading on July 9, 2008. The Patents Bill, which is intended to replace the Patents Act 1953, will bring New Zealand's patent law into closer conformity with international standards. One such development is the international trend for countries to strengthen intellectual property protection through patent term restoration. The Patents Bill specifically excludes diagnostic, therapeutic, and surgical methods from patentability. Plant varieties will also be excluded. The Patents Bill will now proceed through the legislative process and is expected to be sent to Select Committee for review in late 2009.

In April 2008, Parliament passed the Copyright Amendment Bill. The Bill amends the Copyright Act 1994 to address the emergence of technologies such as the Internet. It seeks to maintain the existing balance between the interests of the owners and those of the users of copyrighted works. It also seeks to create a more technology-neutral framework for the Copyright Act. The Bill will update New Zealand's copyright laws to try to ensure that New Zealand's intellectual property rights system remains current and contemporary. The international standards for protection of copyrightable material are currently set by the WIPO Internet Treaties (the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty) of which New Zealand is not a signatory.

In May 1998, the Copyright Act and the Medicines Act was amended to remove a prohibition on parallel importing. This amendment allows importation of legitimate goods into New Zealand without the permission of the holder of the intellectual property rights. Enacted by the government to expand discounted prices for consumers, it also has resulted in an increase in "gray market" goods entering

New Zealand. Manufacturers have expressed concern that parallel imports will result in damage to their reputation due to imports of dated products, products not suitable for New Zealand conditions, and after-market servicing problems. In addition, parallel importing limits returns to the holders of intellectual property by not allowing control over market targeting, such as timing of releases. In October 2003, the government enacted a ban on the parallel importation of films, videos and DVDs for the initial nine months after a film's international release.

Transparency of Regulatory System

Under the Commerce Act 1986, the Commerce Commission administers restrictive trade practices. In general, price fixing and contracts, arrangements, or understandings that have the purpose or effect of substantially lessening competition in a market are prohibited, unless authorized by the Commerce Commission. Before granting such authorization, the commission must be satisfied that the public benefit would outweigh the reduction of competition.

The Commerce Commission can block a merger or takeover that would result in the new company gaining a dominant position in the market. The use of a dominant market position to lessen or prevent various specified types of competition is contrary to the Act's provisions. However, the enforcement of any right under any copyright, patent, protected plant variety, registered design, or trademark does not necessarily constitute abuses of a dominant position.

Suppliers' use of resale price maintenance, in which suppliers of goods set and enforce sale prices to be charged by re-sellers, is prohibited. Advice should be obtained on the application of the Act before the establishment of exclusive distribution, selling, and franchising arrangements in New Zealand.

Reforms adopted since 1984 have included deregulation as a primary objective. The most salient examples are the financial and telecommunications sectors, although the effort has been broad based.

To ensure competition in "natural monopolies," such as telecommunications and electricity, the government has considered increased oversight. Motivated largely by the power industry's

failure to provide adequate electricity reserve capacity, the government set up an Electricity Commission on March 1, 2004. The Commission supervises the electricity industry. Under the 1997 WTO Basic Telecommunications Services Agreement, New Zealand has been committed to the maintenance of an open, competitive environment in the telecommunications sector. Key reforms of the sector, through legislation enacted in December 2001, included appointment of a commissioner responsible for resolving commercial disputes. The Minister of Communications on August 9, 2005, announced changes to the act aimed at improving the monitoring and enforcement of agreements involving regulated services which entered into force on December 18, 2006.

Efficient Capital Markets and Portfolio Investment

Since the removal of financial-sector controls in the mid-1980s, money market activity has grown rapidly, particularly foreign exchange trading and the secondary market in government securities. A range of financial instruments, including forward contracts, options and exchange rate futures, and the use of hedging devices to reduce interest rate and exchange rate risks have been introduced. The New Zealand banking system consists of 16 registered banks and more than 90 percent of their combined assets are owned by foreign banks (Australian banks account for 85 percent of the total). There are only two New Zealand-owned banking institutions, the Kiwibank and the Taranaki Savings Bank (TSB). Access to the credit system is unrestricted.

The Securities Commission, under the Securities Act 1978 and amendments, regulates the issuance of securities. The Act requires

lists for public offerings of new securities and prescribes the information that must be disclosed. An amendment in 1988 provides civil remedies for loss or damages resulting from insider trading. The Securities Markets and Institutions Bill gave the Securities Commission additional powers to increase its effectiveness in monitoring and enforcement, including laws against insider trading. Stocks in a number of New Zealand listed firms are also traded in Australia and in the United States.

A takeovers code that took effect July 1, 2001, requires any person who tenders an offer for a publicly traded company of 20 percent to make that same offer to all shareholders.

Legal, regulatory, and accounting systems are transparent. Financial accounting standards are issued by the Accounting Standards Review Board. The Act makes the adoption of financial accounting standards mandatory for registered companies and issuers of securities, including entities listed on the New Zealand Stock Exchange. The standards generally are adopted by other entities as well. The Board's accounting standards are based largely on international accounting standards, and the use of international accounting standards will be universal. Smaller companies (except issuers of securities and overseas companies) that meet proscribed criteria face less stringent reporting requirements. Entities listed on the stock exchange are required to produce annual financial reports for shareholders together with abbreviated semi-annual reports.

Small, publicly held companies not listed on the New Zealand Stock Exchange (NZX) may include in their constitution measures to restrict hostile takeovers by outside interests, domestic, or foreign. However, NZSE rules prohibit such "poison pill" measures by its listed companies.

Foreign-owned or controlled companies are not excluded from participation in domestic industry standards setting organizations.

Political Violence

New Zealand is a stable western democracy.

Corruption

New Zealand is renowned for its efforts to ensure a transparent, competitive, and corruption-free government procurement system. It is government policy to give local producers a fair chance to compete, but departments are responsible for limiting costs and seeking the best value for the money. Stiff penalties against

bribery of government officials as well as those accepting bribes are strictly enforced. New Zealand ranked number one with a score of 9.3 (e.g. U.S. ranked 18 with score of 7.3) in Transparency International's 2008 "Corruption Perceptions Index", which looks at perceptions of public sector corruption in 180 countries and territories. The highest possible score (i.e. least corrupt) is ten. This is the third year New Zealand was ranked least corrupt.

New Zealand has ratified the OECD Anti-Bribery Convention. New Zealand has opted not to join the GATT/WTO Government Procurement Agreement because the benefits would not justify the compliance costs amid New Zealand's totally deregulated government procurement system. Nonetheless, New Zealand supports multilateral efforts to increase transparency of government procurement regimes.

Bilateral Investment Agreements

New Zealand and Australia trade through a Closer Economic Relationship (CER), which is a free trade agreement eliminating all tariffs between the two countries. However, the rules of origin under the CER do not permit products to enter Australia duty free from New Zealand unless the products are of at least 50 percent New Zealand origin. Additionally, the last manufacturing process must be carried out in New Zealand. The enactment of the Free Trade

Agreement between Australia and the United States on January 1, 2005 removes any tariff disadvantage to U.S. firms that choose re-export products from New Zealand to Australia. Website: http://mfat.govt.nz/Foreign-Relations/Austral ia/1-CER

A Free Trade Agreement between New Zealand and China (NZ-China FTA) was signed on April 7, 2008 in Beijing: Details on MFAT website at: http://www.mfat.govt.nz/Trade-and-Economic-Relations/Trade-Agreements/China

New Zealand concluded a Free Trade Agreements with Singapore in ¶2001. Details on MFAT website at: http://www.mfat.govt.nz/Trade-and-Economic-Relations/Trade-Agreements/Singapore. With Thailand in 2005, see www.mfat.govt.nz/Trade-and-Economic-Relations/0--Trade-archive/0--Trade-agreement s/ Thailand.

New Zealand has a four-way FTA with Brunei, Chile, and Singapore. (known as P4). In 2008, the United States, Australia, and Peru agreed to join the P4. The group has been dubbed the TPP.

OPIC and Other Investment Insurance Programs

As an OECD member country and developed nation-state, New Zealand is not eligible for OPIC programs. New Zealand does not intend to become a member of the Multilateral Investment Guarantee Agency. The New Zealand government does not provide a comparable program like OPIC to its investors. It has a small export credit program that has so far not attracted great commercial interest.

Labor

The overall unemployment rate increased to 4.5 percent by last quarter 2008. There were 2,191,000 persons employed in the workforce (out of a population of 4.28 million) yielding a labor force participation rate of 68.3 percent. The demand for labor has been strong, and shortages of skilled labor remain a problem throughout the economy. Several factors have caused the shortages, including lower wages compared to those in Australia, (where any New Zealander can legally work), lack of training, and falling immigration numbers. Labor shortages are especially pronounced in the construction industry.

On April 1, 2007, the mandatory minimum increased to four weeks' annual leave beginning. Paid leave also can be taken for illness, bereavement, or parenthood.

The New Zealand Parliament passed the Employment Relations (Flexible Working Arrangements) Amendment Bill on November 26, 2007, which changes the Employment Relations Act to provide employees who care for others with the statutory right to request part-time or flexible hours. The changes are not limited to hours of work but can also include the place of work, such as working from home, compressing

the work week into fewer days, flexi-time, staggered hours, shift swapping, and job sharing. The law applies to people employed for six months or longer. If the benefit is initially granted, then employees must wait at least 12 months before they are entitled to make another request.

Employers have grounds for refusing requests due to:
- Inability to reorganize work among existing staff.
- Inability to recruit additional staff.
- Detrimental impact on quality or performance.
- Insufficiency of work during the period the employee proposes to work.
- Planned structural changes.
- Burden of additional costs.
- Detrimental effect on ability to meet customer demand.
- Undermining the terms of a collective agreement.

Unions have the right to organize and collectively bargain. About 21 percent of New Zealand's wage and salary workers are union members.

In 2000, the Labour-led government replaced the Employment Contracts Act 1991 (ECA) with the Employment Relations Act (ERA), contending the change was necessary to restore balance in the powers of employers and employees. The ERA promotes collective bargaining, strengthens unions, and places strong emphasis on good faith bargaining. Employment relationships are based on contracts, and workers may negotiate an employment contract with their employer individually or collectively. A 2004 revision of the ERA strengthened its collective bargaining and good faith provisions. It provides additional protection for workers in the event that company ownership changes. Despite the business sector's initial fears about the ERA, workdays lost to strikes have declined since the late 1970s. 35 work stoppages occurred in the 2007, fewer than the 60 stoppages recorded in 2006. Prospective entrants to the New Zealand market are encouraged to examine the details of the labor legislation. (Information on New Zealand's employment law is available on the Department of Labour's website, http://www.ers.dol.govt.nz).

Minimum wage and workplace safety regulations are incorporated under other laws. An Employment Relations Authority handles disputes, and its decisions may be appealed in an Employment Court.

Foreign Trade Zones

New Zealand does not have any foreign trade zones or free ports.

Foreign Direct Investment Statistics

In 2008, the total stock of New Zealand's investment abroad was NZ$121.9 billion, and the stock of foreign investment in New Zealand was NZ$275.7 billion. The level of Australian direct investment into New Zealand has increased NZ$29.6 billion between 31 March 2003 and 31 March 2008 while the proportion of total direct investment that this represents has increased from 36.3 percent to 54.5 percent. The US and UK are New Zealand's most significant investment partners in respect of portfolio investment (mostly debt securities). As at 31 March 2008, these countries are the source of 46 percent of this form of investment in New Zealand. Australia and the UK are the most significant sources of foreign 'other' investment in New Zealand (mostly loans), together accounting for 55.7 percent of this form of investment.

A feature of this portfolio and other investment is the New Zealand banking sector continuing to use the US and UK as funding sources. New Zealand investment abroad occurs mainly in Australia, the US and the UK, with NZ$70 billion (57.5 percent) of total investment at 31 March 2008 attributed to these three countries, mainly in the form of portfolio investment. Australia, the US and the UK are where the majority of equity investment by New Zealand fund managers is placed.

During the year ended March 2008 flows of investment into New Zealand were NZ$27.5 billion. Of this, the largest contribution came from Australia (NZ$7.8 billion). The UK (NZ$6.6 billion) and the US (NZ$6.9 billion) were also significant contributors. The main form of the Australian investment into New Zealand was 'other' investment, reflecting an increase in borrowing by the New Zealand

banking sector. Flows of New Zealand investment abroad were NZ$12.4 billion over the same period, with $1.3 billion of investment flows to the US, the main destination.

US investment is concentrated in the telecommunications, forestry, transportation, food processing, and electronic data processing sectors. Increased U.S. investments are in petroleum refining and distribution, financial services, information technology, and biotechnology.

Web Resources

Commerce Commission: http://www.comcom.govt.nz
Department of Labour: http://www.ers.dol.govt.nz
Investment New Zealand: http://www.investmentnz.govt.nz
The Overseas Investment Office: http://www.linz.govt.nz
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